IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1440 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

NARENDRA @ ARJIT @ SARKARI NARANSINGH RAJPUT

Versus

STATE OF GUJARAT

Appearance:

MS BANNA DATTA as Amicus Curiae for Petitioner (THR0UGH JAIL).

MR KM MEHTA ADDL.GOVT. PLEADER for Respondents

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 01/05/98

ORAL JUDGMENT

By this petition, under Article 226 of the Constitution of India, the petitioner who is the detenu, calls in question the legality and validity of the order of detention dt.21st November 1997, passed by the Commissioner of Police, for the city of Ahmedabad invoking his powers under Section 3(2) of the Prevention

of Anti-Social Activities Act (hereinafter referred to as "the Act"), pursuant to which the petitioner has been arrested and at present kept under detention.

2. In order to appreciate rival contentions, necessary facts may in brief be stated. The Commissioner of Police for the city of Ahmedabad came to know that instances of snatching away golden chains or other ornaments from the persons of the women passing through the public places were increasing and the people were feeling insecured while wearing their ornaments. He also found that about four complaints with Satellite and Ghatlodiya Police Stations were lodged against the petitioner. As alleged, in all the four cases, the petitioner committed the offence punishable under Sec. 392 read with Sec. 114 of I.P.Code by snatching away the golden chains and other ornaments from the people in public places. Putting the people in the fear of instant death or grivous hurt, he used to extort money and caused the people to bend his way. Those who resisted had to face dire consequences, as some of such persons were brutally beaten. The Police Commissioner wanted to inquire into. He preferred to record the statements of the persons knowing about the nefarious activities of the petitioner, but no one was willing to come forward and give the statement against the petitioner, because every one was feeling insecured and worrying about one's own safety. Every one was aware of the retaliatory tendency of the petitioner. After great persuation and that too when the assurance was given that the particulars disclosing their identity would be kept secret, some of the persons showed their willingness to give the statements. Perusing the statements recorded, the Police Commissioner was satisfied that the petitioner was a head-strong person i.e. dangerous person within the meaning of Sec.2(c) of the Act, and by his nefarious and subversive activities, he was terrorising the people and was disturbing the public order. Not only that he also came to know that numbers of offences, the petitioner was committing but because of fear of violence, the victims preferred not to lodge the complaint against the petitioner and thought it wise to put up with his dread & terror. From the facts brought on record, the Police Commissioner had a reason to believe that the subversive activities of the petitioner were going berserk. It was absolutely necessary to curb the same taking appropriate strict action, but it was found that any action, if taken under general law sounding dull, would yield no result, because he was of the view that the general law was soft to meet with the requirements. The Police Commissioner, after studying the papers, found that the only way out was to pass the order of detention and detain the

petitioner. In the result, the order in question came to be passed, pursuant to which the petitioner was arrested, and at present kept under detention.

3. Initially when the application was filed, no one was representing for and on behalf of the petitioner but at the time of hearing, Ms. Banna Datta promptly showed her willing to render her services as amicus curiae and made necessary submissions. As per her contention, the order is bad, because the privilege under Sec.9(2) of the Act is exercised unjustly, arbitrarily and without anything supporting the same. No doubt, the authority passing the detention order is vested with the privilege, not to disclose certain facts, in public interest but the same has to be exercised judiciously and not arbitrarily or capriciously. Reading the order, it appears that without any application of mind, the Commissioner of Police exercised the powers and that too mechanically relying upon the report made by his subordinate. The subjective satisfaction is therefore vitiated; consequently the order of detention is rendered illegal. She has not raised any other points to assail the order in question.

4. In reply to such contention, Mr.Kamal Mehta, the learned APP has vehemently refuted the allegations made, submitting that considering all materials placed before him, in the public interest, the Police Commissioner has exercised the privilege, because it was made clear to him, that the petitioner, having retaliatory tendency, might assault the witnesses and endanger their safety. When thus the privilege is exercised in true and proper perspective, the order may not be held bad. As both later on confined to the only point about exercise of privilege, I will not dwell upon other points.

5. Before I proceed, it would be better if the law about non-disclosure of certain facts is elucidated. Reading Article 22(5) of the Constitution of India, what becomes clear is that the grounds on which order of detention is passed are required to be communicated to the detenu. The detenu is, therefore, required to be informed not merely factual inference and factual material which led to inference namely not to disclose certain facts, but also the sources from which the factual material is gathered. The disclosure of sources can enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources would be relied upon and used against him on the facts and circumstances of the case. Subject to the

limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act, the detaining authority is of course empowered to withhold such facts and particulars, the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has to be exercised sparingly and in those cases, where public interest dictating non-disclosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons, the authority making the order has to make necessary inquiry applying his mind. What can be deduced from some constitutional as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. If the task of recording statements and necessary inquiry is entrusted to others, and if he mechanically endorses or accepts the recommendation of others or subordinate authority in that behalf without applying mind and taking his own decision, the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power, the detenu may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference of a decision in the case of Bai Amina, w/o Ibrahim Abdul Rahim Alla Vs. State of Gujarat and Others - 22 G.L.R. 1186 held to be the good law by the Full Bench of this Court in the case of Chandrakant N.

Patel Vs. State of Gujarat & Others 35(1) [1994(1)] G.L.R. 761, may be made.

6. In view of such law, the authority passing the detention order has to satisfy the Court filing the affidavit that it was absolutely necessary in the public interest to suppress the particulars about witnesses keeping their safety in mind. It is also necessary to show that the authority applied his mind to the factors emerging on record. It is pertinent to note that in this case, no such affidavit is filed. It can, therefore, be said that without any just cause, the privilege is exercised. Reading the order, it appears that entrusting the task of inquiry whether the fear expressed by the witnesses was genuine or honest or imaginary or an empty excuse to the subordinate officer the detaining authority accepted the report made by his subordinate officer because, he was having the full faith and trust in the subordinate officer. He believed that everything might be in order and honestly reported. On such belief, when the report is accepted which is not legally permissible, it can be said that without any application of mind, the privilege is exercised, and therefore, subjective satisfaction is vitiated. In short, about non-disclosure when the privilege is exercised, the cause justifying the same is not made out. The petitioner, under the circumstances, was entitled to have those particulars so as to make effective representation and point out to the authority how those statements were not reliable. He was deprived of that right and when his right to make effective representation is thus jeopardised, continued detention must be held to be unconstitutional & illegal.

7. For the aforesaid reasons, this petition is allowed. The order of detention dt. 21st November 1997, passed by the Police Commissioner for the city of Ahmedabad is hereby quashed and set aside and the petitioner-detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule accordingly made absolute.

(ccs)